

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:)	Mail Stop Appeal Brief – Patents
)	
Yoshinori TAKASAKI)	Group Art Unit: 2416
)	
Application No.: 09/931,922)	Examiner: C. Grey
)	
Filed: August 20, 2001)	
)	
For: ROUTE CONTROL SYSTEM AND)	
ROUTE CONTROL METHOD IN A)	
SWITCHING APPARATUS)	

U.S. Patent and Trademark Office
Customer Window, Mail Stop Appeal Brief – Patents
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REPLY BRIEF

This Reply Brief is submitted in response to the Examiner's Answer, dated November 13, 2008.

I. STATUS OF CLAIMS

Claims 1-20 were finally rejected in the final Office Action, dated May 29, 2008, and are the subject of the present appeal. These claims are reproduced in the Claim Appendix of the Appeal Brief, filed October 9, 2008.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1, 3-7, and 9-19 stand rejected under 35 U.S.C. § 102(e) as anticipated by Nagata et al. (U.S. Patent No. 6,269,083; hereinafter "NAGATA").

B. Claims 2 and 8 stand rejected under 35 U.S.C. § 103(a) as unpatentable over NAGATA in view of Hsing et al. (U.S. Patent No. 6,167,025; hereinafter "HSING").

C. Claim 20 stands rejected under 35 U.S.C. § 103(a) as unpatentable over NAGATA in view of Hiscock et al. (U.S. Patent No. 6,347,073; hereinafter "HISCOCK").

III. ARGUMENTS

In the "Response to Argument" section of the Examiner's Answer (pp. 13-20), the Examiner reiterates many of the allegations that have been previously presented in the "Grounds of Rejection" section of the Examiner's Answer and the final Office Action, dated May 29, 2008. Thus, Appellants' arguments presented in the Appeal Brief, filed October 9, 2008, are applicable to those allegations. Appellants submit the following additional remarks.

1. Claim 1.

On page 13 of the Examiner's Answer, the Examiner alleges:

The examiner also notes that no functionality is given to the virtual path handler other than sending loopback data to such a handler. Therefore the examiner points to Nagata, fig 14, elements 13 and 51 as equivalent to a virtual path handler, where elements 13 and 14 are exchanges/handlers (handler is broadly interpreted as a device for handling, such as an exchange which handles receipt and transmission of data) which handles virtual channels or paths according to Col 1 lines 10-13.

Appellants disagree with the Examiner's allegations.

Appellants submit that a virtual path handler is a component that handles a virtual path. The Examiner's allegation that the recited virtual path handler can be any device for handling receipt and transmission of data is unreasonable.

Appellants addressed NAGATA's elements 13 and 51 in the Appeal Brief. The Examiner provides no evidence that NAGATA's elements 13 and 51, which NAGATA discloses are network elements (col. 6, lines 34-38), correspond to or include a plurality of virtual path handlers or in any way relate to virtual paths. Appellants submit that the Examiner has not met the initial burden of establishing a proper case of anticipation.

On pages 13-14 of the Examiner's Answer, the Examiner alleges:

The examiner also notes that no functionality is given to the virtual channel handlers other than sending loopback data to such a handler. Therefore the examiner points to Nagata, fig 14 elements 14 and 52 as equivalent to virtual channel handlers, where elements 14 and 52 are exchanges/handlers (handler is broadly interpreted as a device for handling, such as an exchange which handles receipt and transmission of data) which handles virtual channels or paths according to Col 1 lines 10-13.

Appellants disagree with the Examiner's allegations.

Appellants submit that a virtual channel handler is a component that handles a virtual channel. The Examiner's allegation that the recited virtual channel handler can be any device for handling receipt and transmission of data is unreasonable.

Appellants addressed NAGATA's elements 14 and 52 in the Appeal Brief. The Examiner provides no evidence that NAGATA's elements 14 and 52, which NAGATA discloses are network elements (col. 6, lines 34-38), correspond to or include a plurality of virtual channel handlers or in any way relate to virtual channels. Appellants submit that the Examiner has not met the initial burden of establishing a proper case of anticipation.

On pages 14-15 of the Examiner's Answer, the Examiner alleges:

no functionality with respect to the plurality of trunks is given within the claims. Therefore elements 16 and 53 of fig 14, which are termination points for a connection (similar to the applicants disclosure on page 6 lines 20 21 that states that the trunk is a unit for the termination of the VC), are equivalent to trunks.

Appellants disagree with the Examiner's allegations.

The Examiner is alleging that since no functionality is allegedly recited in claim 1 for the plurality of trunks, the Examiner can interpret those well known network elements in any way that the Examiner sees fit. Appellants strenuously object to the Examiner's allegation and submit that it is well settled that when construing claim terminology, claims are to be given their

broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Am. Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364 (Fed. Cir. 2004). Appellants submit that the Examiner's interpretation of the recited plurality of trunks as subscriber terminals is unreasonable. Appellants submit that the Examiner has not met the initial burden of establishing a proper case of anticipation with respect to claim 1.

For at least the foregoing reasons and for those reasons set forth in the Appeal Brief, Appellants submit that the rejection of claim 1 under 35 U.S.C. § 102(e) based on NAGATA is improper. Accordingly, Appellants request that the rejection be reversed.

2. Claim 3.

The Examiner alleges that the elements depicted in Fig. 14 of NAGATA, when taken together, are equivalent to a switching apparatus (Examiner's Answer, p. 16). Appellants submit that the Examiner's allegation is unreasonable.

Fig. 14 of NAGATA depicts a system that includes three subscriber terminals 15, 16, a maintenance terminal 17, and exchanges 11-14, 51, and 52. Appellants submit that the Examiner's allegation that all of these elements, when taken together, correspond to a switching apparatus is completely unreasonable. Moreover, the Examiner provides no explanation as to why one skilled in the art at the time of Appellants' invention would reasonably construe the physically separate, remotely located subscriber terminals, maintenance terminal, and exchanges to be an ATM switching apparatus. The Examiner has not met the initial burden of establishing a proper case of anticipation with respect to claim 3.

For at least the foregoing reasons and for those reasons set forth in the Appeal Brief,

Appellants submit that the rejection of claim 3 under 35 U.S.C. § 102(e) based on NAGATA is improper. Accordingly, Appellants request that the rejection be reversed.

IV. CONCLUSION

In view of the foregoing arguments and at least those arguments presented in the Appeal Brief, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections of claims 1-20 under 35 U.S.C. §§ 102 and 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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